

AMENDED IN SENATE MAY 3, 2001

SENATE BILL

No. 353

Introduced by Senator Alpert

(Principal coauthor: Assembly Member Bates)

(Coauthors: Senators Battin and Peace)

(Coauthors: Assembly Members Kehoe, Wayne, Wyland, and Zettel)

February 21, 2001

~~An act to add and repeal Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code, relating to school facilities~~ *An act to repeal and add Section 14669.15 of the Government Code, relating to public works, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Alpert. ~~School facilities: design-build contracts~~ *State real property: Department of General Services: San Diego.*

(1) Existing law authorizes the Director of General Services to enter into one or more agreements to acquire, construct, purchase, lease, lease-purchase, lease-purchase finance, or lease with an option to purchase, with an initial option purchase price that exceeds \$2,000,000, for the purpose of providing approximately 350,000 net usable square feet in downtown San Diego and approximately 362,100 net usable square feet in a suburban location in the San Diego region, of office and related space and parking to consolidate the operations of state agencies in and around downtown San Diego and to consolidate the operations of state agencies in the surrounding suburban area into one suburban location pursuant to specified conditions. Existing law also authorizes the State Public Works Board to issue revenue bonds,

negotiable notes, or negotiable bond anticipation notes to finance the acquisition of these facilities.

This bill would repeal these provisions and instead authorize the Director of General Services to enter into a joint powers agreement, as specified, with the City of San Diego in connection with the development of approximately 241,000 net usable square feet of new state-owned office space in the City of San Diego, and would provide that the authorized costs of facilities, as specified, may not exceed \$81,000,000.

The bill would authorize the director to enter into an agreement with the joint powers authority to sell bonds and to use and expend funds and provide for other financing in connection with the development, and would authorize the joint powers authority to borrow funds from the Pooled Money Investment Account, a continuously appropriated fund. If the bonds authorized by the project are not sold, the bill would authorize the Department of General Services to repay the loans from the account, and would thereby make an appropriation.

~~(1) Existing law, the Leroy F. Greene School Facilities Act of 1998, establishes a program in which the State Allocation Board is required to provide state per pupil funding for new school facilities construction and school facilities modernization to applicant school districts, including design costs. Existing law requires the State Allocation Board to obtain construction plans for school buildings that are appropriate for school districts in the various climates and geographical conditions of the state requiring school buildings of various sizes, and defines a “school building” for this purpose in the same manner as that term is defined in the Field Act relating to seismic safety.~~

~~Existing law requires school districts constructing school facilities to meet various requirements, including requirements pertaining to seismic safety, the contents of plans for school construction, use of factory built school buildings, and the acquisition of proposed schoolsites.~~

~~This bill would authorize school districts to enter into a design-build contract, as defined for both the design and construction of a school facility that exceeds \$10,000,000. The bill would require the governing board of a school district that wishes to enter into a design-build contract to prepare a request for proposal for the project. The bill would require each contract to prohibit construction or alteration of any school building without the prior written approval of the plans by the Department of General Services, and would require the Superintendent~~

of Public Instruction to develop guidelines for design-build projects within six months after the operative date of this bill.

The bill would require a school district that elects to amend a school project through the design-build selection process to establish a labor compliance program and submit to the Legislative Analyst a report on the project within 60 days after completion of the project. The bill would require the Legislative Analyst to submit a report to the chairs of the education policy committees of the Senate and the Assembly with any recommendations by January 1, 2005.

(2) Existing law sets forth certain limitations regarding public entity contract retention proceeds withheld from a subcontractor.

This bill would, notwithstanding those provisions, authorize withholding of retention payments up to a certain amount by school districts using design-build contracts, and withholding of subcontractor retention payments up to a certain amount by a design-build entity. The bill would prohibit withholding of retention payments for certain purposes.

(3) This bill would remain in effect only until January 1, 2007, and as of that date would be repealed.

(4) —

(2) This bill would declare that it is *to* take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 2.5 (commencing with Section~~
2 ~~SECTION 1. Section 14669.15 of the Government Code is~~
3 ~~repealed.~~
4 ~~14669.15. (a) The Director of General Services may enter~~
5 ~~into one or more agreements to acquire, construct, purchase, lease,~~
6 ~~lease-purchase, lease-purchase finance, or lease with an option to~~
7 ~~purchase, with an initial option purchase price that exceeds two~~
8 ~~million dollars (\$2,000,000), for the purpose of providing~~
9 ~~approximately 241,000 net usable square feet of office and related~~
10 ~~space and 109,000 net usable square feet for parking in downtown~~
11 ~~San Diego, and approximately 226,100 net usable square feet of~~
12 ~~office and related space and 136,000 net usable square feet of~~
13 ~~parking in a suburban location in the San Diego region. It is the~~

~~1 intent of the Legislature that the director consolidate the
2 operations of state agencies in and around downtown San Diego
3 into one or more facilities in downtown San Diego, and
4 consolidate the operations of state agencies in the surrounding
5 suburban area into one suburban location.~~

~~6 In connection with the selection and acquisition of a lease,
7 lease-purchase, lease-purchase finance, or lease with an option to
8 purchase (collectively referred to as “lease” or “leases”), the
9 department shall advertise and award the lease or leases in
10 accordance with subdivision (b) of Section 14669 to the lowest
11 responsible bidder offering to provide a building that meets the
12 state’s requirements.~~

~~13 (b) The State Public Works Board may issue revenue bonds,
14 negotiable notes, or negotiable bond anticipation notes pursuant to
15 the State Building Construction Act of 1955 (Part 10b
16 (commencing with Section 15800)) to finance the acquisition of
17 the facilities authorized in subdivision (a). The board may borrow
18 funds for project costs from the Pooled Money Investment
19 Account pursuant to Sections 16312 and 16313. In the event the
20 bonds authorized for the projects are not sold, the Department of
21 General Services shall adjust the Building Rental Account of the
22 Service Revolving Fund by an amount sufficient to repay any
23 loans made by the Pooled Money Investment Account. It is the
24 intent of the Legislature that this commitment be included in future
25 Budget Acts until outstanding loans from the Pooled Money
26 Investment Account are repaid either through the sale of bonds or
27 from an appropriation.~~

~~28 (1) The amount of revenue bonds, negotiable notes, or
29 negotiable bond anticipation notes to be sold shall equal the cost
30 of acquisition, including land, construction, furnishings and
31 equipment, preliminary plans and working drawings, construction
32 management and supervision, and other costs relating to the design
33 and construction of the facilities, exercising any purchase option,
34 and any additional sums necessary to pay interim and permanent
35 financing costs and costs to issue these bonds. The additional
36 amount may include interest and a reasonable required reserve
37 fund.~~

~~38 (2) Authorized costs of the facilities, including land
39 acquisition, preliminary plans, working drawings, and
40 construction shall not exceed forty five million dollars~~

~~(\$45,000,000) for the downtown San Diego facility and shall not exceed forty-five million dollars (\$45,000,000) for the suburban facility.~~

~~(3) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized pursuant to this subdivision by up to 10 percent of the amount specifically authorized.~~

~~(c) Notwithstanding Section 13340, funds derived from the interim and permanent financing or refinancing of the facilities specified in this section are hereby continuously appropriated without regard to fiscal years for these purposes.~~

~~(d) The net present value of the cost to acquire and operate the facilities authorized in subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of office space, including the present facilities, over the same time period. The Department of General Services, in performing this analysis, shall obtain interest rates, discount rates, and the consumer price index figures from the Treasurer.~~

~~(e) The Director of General Services may sell, lease, or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best interest, the existing state office and parking facilities located in the City of San Diego. The net proceeds, if any, from the sale, lease, or exchange shall be applied toward any obligations undertaken by the director in securing consolidated facilities as authorized by this section.~~

~~(f) The director shall not enter into any agreement to acquire facilities, as specified in subdivision (a), any sooner than 45 days after notification, including the information specified in subdivision (d), to the Chairperson of the Joint Legislative Budget Committee. It is the intent of the Legislature that the Joint Legislative Budget Committee hold a hearing on the pending agreement.~~

SEC. 2. Section 14669.15 is added to the Government Code, to read:

14669.15. (a) Notwithstanding any other provision of law, the Director of General Services may enter into a joint powers agreement with the City of San Diego in connection with the development of approximately 241,000 net usable square feet of new state-owned office space in the City of San Diego. This

1 *development shall include, but not be limited to, the financing,*
2 *planning, acquisition, construction, equipping, and furnishing of*
3 *new state office buildings and parking facilities, and any*
4 *betterments, improvements, and facilities related to the*
5 *development. The development shall comply with the state's*
6 *regulations for sustainability and architectural excellence in*
7 *public buildings.*

8 *(b) The Director of General Services may enter into an*
9 *agreement for the appointment of a bond trustee, and other*
10 *documents and agreements to finance, by sale of bonds or*
11 *otherwise, this development. The Department of General Services*
12 *may act as the agent for acquisition, planning, and construction*
13 *matters. The agreement shall be with the joint powers authority*
14 *created pursuant to the joint powers agreement.*

15 *(c) In connection with the development or any agreement for*
16 *any work or expenses in connection with the development, the joint*
17 *powers authority may use any funds lawfully available to it, and*
18 *the Director of General Services may use and expend any funds*
19 *pursuant to the agreement with the joint powers authority in order*
20 *to complete the development.*

21 *(d) Inasmuch as it is in the best interest of the people of the state*
22 *to consolidate state offices in the City of San Diego as well as other*
23 *southern California locations at the earliest possible opportunity,*
24 *a "design-build" concept may be utilized in meeting the objective*
25 *of this section pursuant to Section 14661.*

26 *(e) (1) The joint powers authority created pursuant to this*
27 *section may borrow from the Pooled Money Investment Account*
28 *pursuant to Sections 16312 and 16313. If the bonds authorized by*
29 *the project are not sold, the Department of General Services, as*
30 *determined by the Department of Finance, shall commit a*
31 *sufficient amount to repay any loans made for the project from the*
32 *Pooled Money Investment Account.*

33 *(2) It is the intent of the Legislature that this commitment shall*
34 *be included in future budget acts until all outstanding loans from*
35 *the Pooled Money Investment Account are repaid either through*
36 *the proceeds from the sale of bonds or from an appropriation in the*
37 *annual Budget Act.*

38 *(f) Authorized costs of the facilities, including land acquisition,*
39 *preliminary plans, working drawings, and construction shall not*

1 *exceed eighty-one million dollars (\$81,000,000).* ~~17250.10) is~~
2 ~~added to Part 10.5 of the Education Code, to read:~~

3
4 CHAPTER 2.5. — DESIGN-BUILD CONTRACTS
5

6 ~~17250.10.—(a) It is the intent of the Legislature to enable~~
7 ~~school districts to utilize cost-effective options for building and~~
8 ~~modernizing school facilities. The Legislature has recognized the~~
9 ~~merits of the design-build procurement process in the past by~~
10 ~~authorizing its use for projects undertaken by the University of~~
11 ~~California, specified local government projects, and state office~~
12 ~~buildings.~~

13 ~~(b) The Legislature also finds and declares that school districts~~
14 ~~utilizing a design-build contract require a clear understanding of~~
15 ~~the roles and responsibilities of each participant in the design-build~~
16 ~~process. The benefits of a design-build contract project delivery~~
17 ~~system include an accelerated completion of the projects, cost~~
18 ~~containment, reduction of construction complexity, and reduced~~
19 ~~exposure to risk for the school district. The Legislature also finds~~
20 ~~that the cost-effective benefits to the school districts are achieved~~
21 ~~by shifting the liability and risk for cost containment and project~~
22 ~~completion to the design-build entity.~~

23 ~~(c) It is the intent of the Legislature to provide an alternative~~
24 ~~and optional procedure for bidding and building school~~
25 ~~construction projects.~~

26 ~~(d) In addition, it is the intent of the Legislature that the full~~
27 ~~scope of design, construction, and equipment awarded to a~~
28 ~~design-build entity shall be authorized in a single funding phase.~~
29 ~~The funding phase may be authorized concurrently with, or~~
30 ~~separately from, the phase that authorizes the creation of the~~
31 ~~performance criteria and concept drawings.~~

32 ~~(e) It is the intent of the Legislature that design-build~~
33 ~~procurement as authorized by the act adding this section shall not~~
34 ~~be construed to extend, limit, or change in any manner the legal~~
35 ~~responsibility of public agencies and contractors to comply with~~
36 ~~existing laws.~~

37 ~~17250.15.—As used in this chapter, the following terms have~~
38 ~~the following meanings:~~

39 ~~(a) “Best value” means a value determined by objective~~
40 ~~criteria and may include, but need not be limited to, price, features,~~

1 functions, life-cycle costs, and other criteria deemed appropriate
2 by the school district.

3 (b) “Design-build” means a procurement process in which
4 both the design and construction of a project are procured from a
5 single entity.

6 (c) “Design-build entity” means a corporation, limited
7 partnership, partnership, or other association that is able to provide
8 appropriately licensed contracting, architectural, and engineering
9 services as needed pursuant to a design-build contract.

10 17250.20. When, it is in the best interest of the school district,
11 the school district may enter into a design-build contract for both
12 the design and construction of a school facility that exceeds ten
13 million dollars (\$10,000,000), if, after evaluation of the traditional
14 design, bid, and build process of school construction and of the
15 design-build process in a public meeting, the school district makes
16 written findings that use of the design-build process on the specific
17 project under consideration will accomplish one of the following
18 objectives: reduce comparable project costs, expedite the project’s
19 completion, and provide features not achievable through the
20 traditional design-bid-build method. The school district shall also
21 review the guidelines developed pursuant to Section 17250.45 and
22 shall adopt a resolution approving the use of a design-build
23 contract pursuant to this article prior to entering into a design-build
24 contract. In the case of a design-build project proposal funded
25 pursuant to Chapter 12.5 (commencing with Section 17070.10) of
26 Part 10, the resolution may be included as part of any application
27 for state funds.

28 17250.25. Design-build projects shall progress in a three-step
29 process, as follows:

30 (a) (1) After review of the guidelines specified in Section
31 17250.45, the governing board of the school district shall prepare
32 a request for proposal setting forth the scope of the project that may
33 include, but is not limited to, the size, type and desired design
34 character of the buildings and site, performance specifications
35 covering the quality of materials, equipment, and workmanship,
36 preliminary plans or building layouts, or any other information
37 deemed necessary to describe adequately the school district’s
38 needs. The performance specifications and any plans shall be
39 prepared by a design professional who is duly licensed or
40 registered in California.

~~(2) Each request for proposal shall do all of the following:~~

~~(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.~~

~~(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.~~

~~(C) Include a section identifying and describing all of the following:~~

~~(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.~~

~~(ii) The methodology and rating or weighting scheme that will be used by the school district in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.~~

~~(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.~~

~~(iv) If, pursuant to clause (iii) of subparagraph (C) of paragraph (2) of subdivision (a), a nonweighted system is described, the school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:~~

~~(I) Significantly more important than cost or price.~~

~~(II) Approximately equal in importance to cost or price.~~

~~(III) Significantly less important than cost or price.~~

~~(v) If the school district wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.~~

~~(3) Notwithstanding Section 4-315 of Part 1, of Title 24 of the California Code of Regulations an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 17302.~~

~~(b) (1) The school district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Superintendent of Public Instruction in~~

1 cooperation with the Director of the Department of Industrial
2 Relations. In preparing the questionnaire, the superintendent shall
3 consult with the construction industry, including representatives
4 of the building trades, surety industry, school districts, and other
5 affected parties. This questionnaire shall require information
6 including, but not limited to, all of the following:

7 (A) If the design-build entity is a partnership, limited
8 partnership, or other association, a listing of all of the partners,
9 general partners, or association members who will participate as
10 subcontractors in the design-build contract.

11 (B) Evidence that the members of the design-build entity have
12 completed, or demonstrated the experience, competency,
13 capability, and capacity to complete projects of similar size, scope
14 or complexity, and that proposed key personnel have sufficient
15 experience and training to competently manage and complete the
16 design and construction of the project.

17 (C) The licenses, registration, and credentials, required to
18 design and construct the project, including information on the
19 revocation or suspension of any license, credential, or registration.

20 (D) Evidence that establishes that the design-build entity has
21 the capacity to obtain all required payment and performance
22 bonding, liability insurance, and errors and omissions insurance,
23 as well as a financial statement that assures the school district that
24 the design-build entity has the capacity to complete the project.

25 (E) Any prior serious or willful violation of the California
26 Occupational Safety and Health Act of 1973, contained in Part 1
27 (commencing with Section 6300) of Division 5 of the Labor Code
28 or the Federal Occupational Safety and Health Act of 1970 (P.L.
29 91-596), settled against any member of the design-build entity, and
30 information concerning a contractor member's workers'
31 compensation experience history and worker safety program.

32 (F) Information concerning any debarment, disqualification or
33 removal from a federal, state or local government public works
34 project. Any instance where an entity, its owners, officers, or
35 managing employees, submitted a bid on a public works project
36 and were found by an awarding body not to be a responsive bidder.

37 (G) Any instance where the entity, its owner, officers, or
38 managing employees defaulted on a construction contract.

39 (H) Any prior violations of the Contractors' State License Law
40 (Chapter 9 (commencing with Section 7000) of Division 3 of the

~~Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, settled against any member of the design-build entity.~~

~~(I) Information concerning the bankruptcy or receivership of any member of the entity, including information concerning any work completed by a surety.~~

~~(J) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.~~

~~(K) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be liable for full performance under the design-build contract.~~

~~(2) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.~~

~~(c) The district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:~~

~~(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.~~

~~(2) Notwithstanding any other provision of the Education Code or of Section 20110 of the Public Contract Code, a school district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach;~~

1 life-cycle costs, project features, and project functions. However,
2 competitive proposals shall be evaluated by using the criteria and
3 source selection procedures specifically identified in the request
4 for proposal. Once the evaluation is complete, all responsive
5 bidders shall be ranked from the most advantageous to least
6 advantageous to the school district.

7 (A) Any architectural or engineering firm or individual
8 retained by the governing body of the school district to assist in the
9 development criteria or preparation of the request for proposal
10 shall not be eligible to participate in the competition with the
11 design-build entity.

12 (B) The award of the contract shall be made to the responsible
13 bidder whose proposal is determined, in writing by the school
14 district, to be the best value to the school district.

15 (C) Proposals shall be evaluated and scored solely on the basis
16 of the factors and source selection procedures identified in the
17 request for proposal. However, the following minimum factors
18 shall collectively represent at least 50 percent of the total weight
19 or consideration given to all criteria factors: price, technical
20 expertise, life cycle costs over 15 years or more, skilled labor force
21 availability, and acceptable safety record.

22 (D) The school district shall issue a written decision supporting
23 its contract award and stating in detail the basis of the award. The
24 decision and the contract file must be sufficient to satisfy external
25 audit.

26 (E) Notwithstanding any provision of the Public Contract
27 Code, upon issuance of a contract award, the school district shall
28 publicly announce its awards identifying the contractor to whom
29 the award is made, the winning contractor's price proposal and its
30 overall combined rating on the request for proposal evaluation
31 factors. The notice of award shall also include the agency's ranking
32 in relation to all other responsive bidders and their respective price
33 proposals and a summary of the school district's rationale for the
34 contract award.

35 (F) For purposes of this chapter, "skilled labor force
36 availability" means that an agreement exists with a registered
37 apprenticeship program, approved by the California
38 Apprenticeship Council, which has graduated apprentices in the
39 preceding five years. This graduation requirement shall not apply
40 to programs providing apprenticeship training for any craft that

1 ~~has not been deemed by the Department of Labor and the~~
2 ~~Department of Industrial Relations to be an apprenticeable craft in~~
3 ~~the five years prior to enactment of this act.~~

4 (G) ~~For the purposes of this chapter, a bidder's "safety record"~~
5 ~~shall be deemed "acceptable" if its experience modification rate~~
6 ~~for the most recent three-year period is an average of 1.00 or less,~~
7 ~~and its average total recordable injury/illness rate and average lost~~
8 ~~work rate for the most recent three-year period does not exceed the~~
9 ~~applicable statistical standards for its business category, or if the~~
10 ~~bidder is a party to an alternative dispute resolution system as~~
11 ~~provided for in Section 3201.5 of the Labor Code.~~

12 17250.30. ~~If the governing body of a school district elects to~~
13 ~~award a school project through the design-build selection process~~
14 ~~pursuant to this chapter, all of the following shall apply:~~

15 (a) ~~The school district shall not withhold retention proceeds~~
16 ~~from payments to the design-build entity for actual costs incurred~~
17 ~~and billed for design services, construction management services,~~
18 ~~or where applicable, for completed operations and maintenance~~
19 ~~services.~~

20 (b) ~~In a contract between the design-build entity and a~~
21 ~~subcontractor, and in a contract between a subcontractor and any~~
22 ~~subcontractor thereunder, the percentage of the retention proceeds~~
23 ~~withheld may not exceed the percentage specified in the contract~~
24 ~~between the school district and the design-build entity. If the~~
25 ~~design-build entity provides written notice to any subcontractor~~
26 ~~who is not a member of the design-build entity, prior to or at the~~
27 ~~time that the bid is requested, that a bond may be required and the~~
28 ~~subcontractor subsequently is unable or refuses to furnish a bond~~
29 ~~to the design-build entity, then the design-build entity may~~
30 ~~withhold retention proceeds in excess of the percentage specified~~
31 ~~in the contract between the school district and the design-build~~
32 ~~entity from any payment made by the design-build entity to the~~
33 ~~subcontractor.~~

34 (c) ~~Notwithstanding any provision of law to the contrary, if a~~
35 ~~bona fide dispute exists, the school district may withhold from any~~
36 ~~payment due the design-build entity an amount not to exceed 150~~
37 ~~percent of the disputed amount until the dispute is resolved.~~

38 (d) ~~Notwithstanding any provision of the law to the contrary,~~
39 ~~if a bona fide dispute exists, the design-build entity may withhold~~
40 ~~retention payments due a subcontractor who is not a member of the~~

1 design-build entity, in an amount not to exceed 150 percent of the
2 disputed amount until the dispute is resolved.

3 ~~(e) The school district shall establish and enforce a labor~~
4 ~~compliance program containing the requirements outlined in~~
5 ~~Section 1771.5 of the Labor Code or shall contract with a third~~
6 ~~party to operate a labor compliance program containing the~~
7 ~~requirements outlined in Section 1771.5 of the Labor Code. This~~
8 ~~requirement shall not apply to projects where the school district or~~
9 ~~the design-build entity has entered into a collective bargaining~~
10 ~~agreement or collective bargaining agreements that bind all of the~~
11 ~~contractors performing work on the project.~~

12 ~~17250.35. (a) Any design-build entity that is selected to~~
13 ~~design and build a project pursuant to this chapter shall possess or~~
14 ~~obtain sufficient bonding to cover the contract amount for~~
15 ~~nondesign services, and errors and omission insurance coverage~~
16 ~~sufficient to cover all design and architectural services provided in~~
17 ~~the contract. This chapter does not prohibit a general or~~
18 ~~engineering contractor from being designated the lead entity on a~~
19 ~~design-build entity for the purposes of purchasing necessary~~
20 ~~bonding to cover the activities of the design-build entity.~~

21 ~~(b) Any payment or performance bond written for the purposes~~
22 ~~of this chapter shall use a bond form developed by the Department~~
23 ~~of General Services pursuant to subdivision (i) of Section 14661~~
24 ~~of the Government Code. The purpose of this subdivision is to~~
25 ~~promote uniformity of bond forms to be used on school district~~
26 ~~design-build projects throughout the state.~~

27 ~~(c) (1) All subcontracts that were not listed by the design-build~~
28 ~~entity in accordance with Section 17250.25 shall be awarded by~~
29 ~~the design-build entity.~~

30 ~~(2) The design-build entity shall do both of the following:~~

31 ~~(A) Provide public notice of the availability of work to be~~
32 ~~subcontracted.~~

33 ~~(B) Provide a fixed date and time on which the subcontracted~~
34 ~~work will be awarded.~~

35 ~~(3) Subcontractors bidding on contracts pursuant to this~~
36 ~~subdivision shall be afforded the protections contained in Chapter~~
37 ~~4 (commencing with Section 4100) of Part 1 of Division 2 of the~~
38 ~~Public Contract Code.~~

39 ~~17250.40. (a) The minimum performance criteria and design~~
40 ~~standards established pursuant to this chapter by a school district~~

for quality, durability, longevity, and life-cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board shall retain the services of an architect or structural engineer who is duly licensed and registered in California through the course of the project, in order to ensure compliance with this chapter.

(b) The governing board of the school district shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(c) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be compliance with Sections 17267 and 17297.

(d) The design-build entity and each member of the design-build entity, shall be liable for building the facility to specifications as set forth in the design-build contract, and shall assume the risk of any cost overruns, beyond the costs to the school district set forth in the design-build contract, that are necessary to accomplish full performance under the design-build contract.

17250.45.— The Superintendent of Public Instruction shall, in consultation with the Department of General Services, Energy Resources, Conservation and Development Commission, Seismic Safety Commission, school district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed within six months of the operative date of this chapter.

17250.50.— Each school district that adopts the design-build process for a school construction project shall submit to the Legislative Analyst a report on the project at the completion of the project. Completion shall have the same meaning as defined in

~~subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project and before a school district may adopt another design-build school construction project. The report shall be on a form developed by the Legislative Analyst in conjunction with the State Department of Education. The Legislative Analyst shall report to the chairs of the education policy committees of the Senate and the Assembly with any recommendations for changing the design-build legislation. The Legislative Analyst shall submit the report by January 1, 2005. The report shall include, but not be limited to, all of the following information:~~

- ~~(a) The type of facility.~~
- ~~(b) The gross square footage of the facility.~~
- ~~(c) The company or contractor who was awarded the project.~~
- ~~(d) The estimated and actual length of time to complete the project.~~
- ~~(e) The estimated and actual project cost.~~
- ~~(f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.~~
- ~~(g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.~~
- ~~(h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.~~
- ~~(i) The findings established pursuant to Section 17250.20 and a post completion evaluation to whether the findings were achieved.~~
- ~~(j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.~~

~~SEC. 2.—This act does not exempt design-build contracts from otherwise applicable provisions of the Public Contract Code unless the exemption is granted expressly, or by necessary implication.~~

~~SEC. 3.—Unless expressly authorized in this act, no otherwise applicable provision of the Field Act (Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 3 of Part 10.5 of, and Article 7 (commencing with~~

~~Section 81130) of Chapter 1 of Part 49 of, the Education Code) may be waived, amended, or ignored by the school district or the design-build entity. The school board shall certify Field Act compliance pursuant to the provisions of this act. School districts shall certify that they intend to meet or exceed the minimum performance criteria and design standards established by the Superintendent of Public Instruction in all design-build contracts entered into pursuant to this chapter.~~

~~SEC. 4.—This act shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.~~

~~SEC. 5.—This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.~~

~~SEC. 6.—~~

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to facilitate the efficient construction of needed school facilities development of new state-owned office space in the City of San Diego, it is necessary that this bill take effect immediately.~~